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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	: Chapter 11
	:
SEARS HOLDINGS CORPORATION, et al.,	: Case No. 18-23538 (RDD)
	: (Jointly Administered)
	:
Debtors¹.	: RE: D.I. 1731 and 1774

**LIMITED OBJECTION AND RESERVATION OF RIGHTS OF SERVICENOW, INC. TO NOTICE
OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

ServiceNow, Inc. ("ServiceNow") submits this limited objection and reservation of rights ("Objection") to the Debtors' *Notice of Cure Costs and Potential Assumption and Assignment of*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Executory Contracts and Unexpired Leases in Connection with the Global Sale Transaction (the “Cure Notice”) [D.I. 1731], and the supplement to the Cure Notice [D.I. 1774], and respectfully represents as follows:

1. ServiceNow and Sears Holding Management Corporation and Sears Holdings Corporation on behalf of themselves and their affiliates (collectively, “Sears”) entered into a certain Master Service Agreement (the “Agreement”) dated January 31, 2014 setting forth the terms and conditions of SHMC’s purchase and use of ServiceNow’s products and services. A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

2. Pursuant to the Agreement, ServiceNow and Sears and its affiliated debtors (collectively, the “Debtors”) entered into a certain Order Form (“Order Form”) executed by Sears on December 13, 2017, setting forth certain specific goods or services to be provided or performed by ServiceNow under the Agreement. A copy of the Order Form, and the invoice dated December 1, 2018 issued pursuant thereto are attached hereto as **Exhibit B**. Additional terms of the executory contract between ServiceNow and Sears are incorporated into the Order Form by reference to www.servicenow.com/schedules.html (“Additional Terms”).

3. In the Cure Notices, the Debtors list the Agreement and Order Form among the executory contracts subject to potential assumption by the Debtors’ buyer in connection with a global sale transaction. The Cure Notices list the proposed cure amount for the Agreement and the Order Form as \$0.00.

4. First, ServiceNow objects to any potential attempt by the Debtors to characterize the Agreement and the Order Form as separate executory contracts. ServiceNow contends that the Agreement and the Order Form, together with the Additional Terms, constitute a single, integrated, indivisible agreement (hereinafter, collectively the “Executory Contract”). A “[d]ebtor may not

assume parts of a single, indivisible agreement while rejecting other parts. It must assume or reject an indivisible agreement *in toto*.” *In re Hawker Beechcraft, Inc.*, No. 12-11873 (SMB), 2013 WL 2663193, at *3 (Bankr. S.D.N.Y. June 13, 2013). ServiceNow hereby reserves all of its rights in the event of any dispute over this issue.

5. As of October 15, 2018 (the “Petition Date”), ServiceNow was not owed any amounts by the Debtors for any pre-petition amounts due under the Executory Contract. However ServiceNow has continued during the Bankruptcy to provide post-petition services to the Debtors. Moreover, under the terms of the Executory Contract, a total of \$3,465,876.00 is now or will in the future be owed to ServiceNow. The amount of \$1,732,938.00 representing the second annual subscription fee under the Executory Contract for the period from January 31, 2019 through January 30, 2020 will be due on January 30, 2019, and the same amount (\$1,732,938.00) for the period from January 31, 2020 through January 30, 2021 will be due on January 30, 2020. The Debtors still owe ServiceNow these amounts.

6. Thus depending upon the outcome of the global sale transaction of the Debtors’ assets, and ultimately whether the Executory Contract is assumed or rejected, the total amount due to ServiceNow will be in excess of \$3.4 million.

7. ServiceNow does not object to the potential assumption and assignment of the Executory Contract in its entirety, and does not dispute that as of the Petition Date no amount was owing to ServiceNow, but out of an abundance of caution, ServiceNow files its Objection to reserve all of its rights and claims under the Executory Contract and under applicable law, including without limitation, its claim(s) for all current and future amounts owed in connection with the Executory Contract, its rights to seek adequate assurance of future performance and/or assert administrative priority and/or unsecured claims for all applicable amounts, and/or to assert

a rejection claim for all damages and amounts owed in the event the Debtors ultimately reject the Executory Contract.

Date: January 28, 2019

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